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Via Email

California Building Standards Commission

2525 Natomas Park Drive, Suite 130

Sacramento, CA 95833-2936

Email: cbsc@dgs.ca.gov

**Re: Building Standards Commission Meeting – Proposed
Building Standards of the Department of Housing and
Community Development**

Dear Building Standards Commission:

Thank you for the opportunity to submit comments on the proposed amendments to the Access Code. Disability Rights California (DRC) provides the following comments on behalf of individuals with disabilities. DRC is a non-profit agency established under federal law to protect, advocate for and advance the human, legal and service rights of Californians with disabilities. It works in partnership with people with disabilities, striving towards a society that values all people and supports their rights to dignity, freedom, choice and quality of life. Since 1978, Disability Rights California has provided essential legal services to people with disabilities. It provides legal assistance annually on more than 24,000 matters to individuals with disabilities, many of whom reach out to us because they have trouble finding housing with needed accessible features.

On behalf of Californians with disabilities who need access to affordable accessible housing, we offer the following comments regarding the proposals of the Department of Housing and Community Development (HCD) sent to this Commission.

Chapter 2, Section 202 – Definition of Riser Approve.

Rationale: DRC supports the proposed changes, which track the language proposed by the Department of the State Architect (DSA) and which the Access Code Collaborative unanimously supported and the Code Advisory Committee supported.

BSC Criteria: The proposed change is in compliance with the nine point BSC criteria.

DRC also urges the Commission to direct HCD address federal and state statutory mandates with regard to the definition of “public housing” and other related sections in the next interim cycle.

HCD, as a recipient of federal dollars, is required to comply with Section 504 of the Rehabilitation Act (Section 504) and HUD’s implementing regulations at 24 C.F.R. Part 8 in all of HCD’s operations, not just in the programs directly receiving federal funds. 24 C.F.R. § 8.2. This includes grantees and subgrantees of HCD programs.

Section 504 prohibits all entities receiving federal financial assistance from engaging in discrimination against persons with disabilities. 29 U.S.C. § 794. Additionally, Section 504 requires covered entities to provide people with disabilities meaningful access to programs, services, and activities. *Alexander v. Choate*, 469 U.S. 287 (1985). Section 504 applies across the board to “all of the operations of a department, agency, ..., or other instrumentality of a State or of a local government; or ... the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government.” 29 U.S.C. § 794(b)(1)(B). In addition, Section 504 requires that entities provide services to individuals with disabilities “in the most integrated setting.” 24 C.F.R. § 8.4(d). (This is sometimes loosely referred to as an “Olmstead” obligation.)

The ADA also requires all public entities, including state and local governments and their departments, agencies, and instrumentalities to provide people with disabilities meaningful access to programs, services, and activities. *Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996). Like Section 504, the meaningful access requirement applies across the board regardless of whether a particular program has direct federal funding. The ADA regulations also require that services are provided in the most integrated setting, defined as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.” 28 C.F.R. pt. 35 app. A (2010).

At the state level, Section 11135 of the California Government Code prohibits state entities and all entities receiving financial assistance from the State of California from discriminating on the basis of disability. Section 11135 incorporates the definitions of discrimination contained in the ADA and its implementing regulations such that a violation of the ADA is also a violation of Section 11135. Cal. Gov. Code § 11135(b). Under section 11135(a), this covers “any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state,” so it covers all of HCD’s programs, grantees, and subgrantees.

Thus, in order for HCD to fully comply with accessibility and community integration mandates in federal and state law, it must address these issues in the Building Code. DSA previously proposed Code amendments that would address its own federal and state obligations. These now withdrawn proposals including changes to the “public housing” definition, if adopted in HCD’s section of the Code would also bring HCD into compliance with its obligations.

Specifically, we urge the Commission to direct HCD to review and consider DSA’s withdrawn proposals (Item 1.02 Ch. 11B, 1.9.1.3; Item 2.01 Ch. 2 – “Public Housing” Definition; Item 2.02 Ch. 2 – “Public Use” Definition; and Item 11B.07 Sec. 11B-233.3) in the 2019 Interim Code Change Cycle to ensure full compliance in its own section of the Code. Without these changes, HCD will continue its failure to comply with federal and state mandates.

Thank you for your time and consideration. If you have questions or need further information, please contact Dara Schur (510-267-1227; dara.schur@disabilityrightsca.org) or Natasha Reyes (213-213-8119; natasha.reyes@disabilityrightsca.org).

Sincerely,

/s/

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